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LAND RESOURCE MANAGEMENT, INC.; and
MARINA COMMERCIAL OFFICES, LLC

**UNITED STATES FEDERAL DISTRICT COURT
FOR THE DISTRICT OF NEVADA - NORTHERN DIVISION**

RALPH STEPHEN COPPOLA; DOES I to
XX,

Plaintiffs,

vs.

DARREN K. PROULX; LAND RESOURCE
INVESTMENTS, INC., LAND RESOURCE
MANAGEMENT, INC.; MARINA
COMMERCIAL OFFICES, LLC; and DOES I
to XX,

Defendants.

Case No. 3:2011-CV-00074

DEFENDANTS' OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT; COUNTER MOTION
FOR SUMMARY
JUDGMENT/ADJUDICATION;
MOTION FOR JUDGMENT ON THE
PLEADINGS; AFFIDAVIT IN
SUPPORT

**DEFENDANTS' OPPOSITION TO MOTION FOR PARTIAL SUMMARY
JUDGMENT, COUNTER MOTION FOR SUMMARY JUDGMENT/ADJUDICATION,
AND MOTION FOR JUDGMENT ON THE PLEADINGS**

COME NOW, Defendants DARREN K. PROULX, LAND RESOURCE
INVESTMENTS, INC., LAND RESOURCE MANAGEMENT, INC., and MARINA
COMMERCIAL OFFICES, LLC, by and through their counsel of record, Alessi & Koenig,
LLC, and hereby oppose Plaintiff's Motion for Partial Summary Judgment and move this court

1 for summary judgment/adjudication pursuant to FRCP 56 and judgment on the pleadings
2 pursuant to FRCP 12(c).

3 Defendants' opposition and counter motion are made and based upon the attached
4 Memorandum of Points and Authorities, the supporting Affidavit of Darren Proulx, the pleadings
5 and papers on file herein, and any argument of counsel the court may consider at the hearing on
6 this Motion.
7

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9 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

10 Plaintiff's lawsuit and subsequent motions place Defendants in a unique situation. Land
11 Resource Investments, Inc. (hereinafter, "LRI"), headed by Defendant Darren Proulx, is in the
12 business of selling fractional interests in parcels of real property. Land Resource Management,
13 Inc. (hereinafter "LRM"), also headed by Mr. Proulx, engages in the management of the property
14 owners associations that LRI forms for the properties it sells. Mr. Coppola (hereinafter,
15 "Plaintiff") is an attorney licensed in the State of California. He served as counsel for LRI and
16 LRM from November of 2007 until his resignation in May of 2010.
17

18
19 Since his resignation, Plaintiff has engaged in a determined effort to harm his former
20 clients. Namely, he has filed complaints against LRI and Darren Proulx with the following state
21 and federal agencies: the Office of the Nevada Labor Commissioner, the Nevada Secretary of
22 State, the Nevada Department of Real Estate, the California Department of Corporations –
23 Securities Regulation Division, the California Department of Real Estate, the U.S. Securities and
24 Exchange Commission, and the U.S. Equal Employment Opportunity Commission. To top
25 things off, Plaintiff now brings the present lawsuit – consisting of forty five causes of action –
26 against Darren Proulx and his companies.
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1 Like the complaints Plaintiff filed against Defendants with state and federal agencies,
2 the present litigation concerns the subject matter of the legal representation Plaintiff provided
3 for Defendants. For example, as counsel for LRI, Plaintiff argued to multiple state agencies that
4 LRI's sale of interests in real property does not fall within the purview of federal and state
5 securities regulations. Every state agency that has inquired into the issue has been persuaded to
6 call off any investigation into LRI. Plaintiff brings the present lawsuit on the grounds that
7 LRI's sale of interests in real property *does* violate federal and state securities laws. Plaintiff
8 thereby takes the *opposite* position to what he argued as counsel for LRI.

9
10 In filing this lawsuit, Plaintiff has committed a serious violation of the fiduciary
11 obligations he owes to his former clients. These fiduciary obligations prohibit Plaintiff from (1)
12 engaging in adverse litigation against a former client where client confidences may be
13 compromised, or (2) taking any action which harms a former client with respect to the subject
14 matter of the legal representation the attorney provided.
15

16 If the Court dismisses Plaintiff's federal causes of action, the Court will lose the ability to
17 exercise subject matter jurisdiction over the state law claims. Of the First Amended Complaint's
18 forty-five causes of action, only four are based on federal law. These are: the first and second
19 causes of action (federal securities laws); the fourteenth cause of action (RICCO Act); and the
20 thirty-second cause of action (Americans with Disabilities Act). Of these four causes of action,
21 Defendants are entitled to summary adjudication on the first three because they fall within
22 Plaintiff's former legal representation of Defendants. With respect to the purported violation of
23 the Americans with Disabilities Act (the "ADA"), Plaintiff merely makes the conclusory
24 allegation that Defendant failed to accommodate Plaintiff's "perceived disability" without even
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1 identifying the perceived disability. Defendants are therefore entitled to judgment on the
2 pleadings with respect to the ADA claim.

3 Defendants ask that the Court do more than just dismiss the federal causes of action.
4 Clearly, Plaintiff's lawsuit is not a serious effort. He is simply using this Court as a tool to
5 harass his former clients in a blatant violation of the rules of professional conduct. Plaintiff's
6 lack of seriousness can be seen in the use of "doe plaintiffs," which are listed in the caption of
7 the complaint. Many of the causes of action are brought on behalf of "all plaintiffs" or the
8 "associations" (i.e. doe plaintiffs who are not presently part of this lawsuit). Defendants simply
9 have no obligation, or any effective means, to participate in a lawsuit where the plaintiffs are
10 fictional "does." Moreover, even if a procedure did exist for substituting in real plaintiffs for doe
11 plaintiffs, Plaintiff is not a Nevada licensed attorney and could not represent them. Furthermore,
12 numerous causes of action, such as the ADA claim, are simply thrown in with no attempt to
13 properly allege the elements.
14

15 Put simply, Plaintiff's complaint and his motions are a horrid mess of careless pleading
16 brought for the sole purpose of harassing his former clients. The Court should not allow itself to
17 be misused in this way. Defendants request that the entire action be dismissed with prejudice.
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20 21 **II. FACTUAL BACKGROUND**

22 **A. Land Resource Investment, Inc.**

23 LRI sells a product which is describes as "land banking." LRI describes land banking as
24 the process of buying and then holding real estate located in the path of urban growth for future
25 sale. (Affidavit of Darren Proulx.)
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1 Specifically, LRI purchases or options a large parcel of undeveloped real estate situated
2 on the outskirts of a major metropolitan area (a "Property"). LRI adopts and records Covenants,
3 Conditions and Restrictions ("CC&Rs") that are appurtenant to a Property. LRI then applies to
4 the California Department of Real Estate ("DRE") for permission to subdivide a property into an
5 undivided interest subdivision. Once approved, the DRE issues a Public Report authorizing the
6 sale of the real estate interests. LRI acts as an incorporator and files Articles of Incorporation for
7 a California Non-Profit Mutual Benefit Corporation (an "Association"), and adopts Bylaws for
8 the Association. The purpose of the Association is to provide the purchasers of the real estate
9 interests a mechanism to manage a Property themselves. (Affidavit of Darren Proulx.)
10

11 Upon a close of escrow, each purchaser of a real estate interest receives a separate grant
12 deed to his or her undivided fee simple ownership interest in the real estate guaranteed by a
13 standard CLTA policy of title insurance. By virtue of the CC&Rs, each undivided fee simple
14 ownership interest includes one membership interest in the Association. The owners of the real
15 estate interest in a Property use the Association to provide and coordinate certain ministerial
16 services such as paying property taxes, buying insurance, paying for accounting and tax services,
17 keeping a Property free of weeds, etc. The owners are responsible to pay a pro-rata share of the
18 dues of the Association. The CC&Rs provide a mechanism for enforcing the payment of dues.
19 (Affidavit of Darren Proulx.)
20
21

22 At present, there are seventeen (17) Associations. Each Association is named a variation
23 of "Cal Land Resources ### Association, Inc.," with the numerical portion of the name different
24 for each Association. (Affidavit of Darren Proulx.)
25

26 Each owner may freely sell, transfer and/or assign his or her undivided fee simple interest
27 in the real estate to any other party at any time without restriction. Further, the CC&Rs provide a
28

1 mechanism by which to sell the entire parcel, at which time all owners will receive a pro-rata
2 distribution of the proceeds from the sale. (Affidavit of Darren Proulx.)

3 Defendant, Land Resource Management, Inc. ("LRM"), is a company headed by
4 Defendant Darren Proulx. Most of the Associations have hired LRM to perform management
5 duties. (Affidavit of Darren Proulx.)
6

7
8 **B. Plaintiff Stephen Coppola's Legal Representation Of LRI, LRM And The Associations**

9 On or around November 27, 2007, LRI hired Plaintiff Stephen Coppola ("Plaintiff") to
10 provide general counsel for the businesses. Plaintiff is a California-licensed attorney living in
11 Reno, Nevada. In or around January of 2010, Plaintiff applied for admission to the Nevada
12 State Bar pursuant to Nevada's multijurisdictional laws which allow out-of-state attorneys to
13 practice law in Nevada while providing in-house counsel for a Nevada company. The Nevada
14 State Bar issued Plaintiff a bar number, 11343C, with the "C" indicating Plaintiff's limited
15 ability to practice as in-house counsel for LRI (Affidavit of Darren Proulx.)
16

17 During his tenure as counsel for LRI, Plaintiff also provided general legal services for
18 LRM. In or around March of 2010, the Associations also hired Plaintiff to perform general
19 legal services. With respect to Plaintiff's simultaneous representation of LRI, LRM and the
20 Associations, Plaintiff generated a conflict of interest waiver which the Associations signed.
21 (Affidavit of Darren Proulx.)
22

23 Whether state or federal securities laws apply to LRI's sale of real estate interests is an
24 issue that has arisen multiple times since LRI retained Plaintiff as general counsel. The issue
25 first arose in or around December 2007 when the Nevada Secretary of State, Securities Division
26 ("Nevada Securities Division"), contacted LRI and Mr. Proulx regarding an investigation into
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1 whether LRI's sale of real estate interests violated Nevada's securities laws. LRI hired the law
2 firm of Gordon & Silver, Ltd. to generate a response for the Nevada Securities Division. The
3 efforts of Gordon & Silver, Ltd., with assistance from Plaintiff who helped coordinate between
4 LRI and Gordon & Silver, Ltd., culminated in a thorough legal opinion letter explaining why the
5 property interests LRI sells are not securities subject to federal or state securities laws. After the
6 legal opinion letter was submitted to the Nevada Securities Division, the Nevada Securities
7 Division sent LRI and Mr. Proulx a notice that it would be closing the investigation. (Affidavit
8 of Darren Proulx.)
9

10 On multiple subsequent occasions, Plaintiff provided legal representation for LRI with
11 respect to the issue of whether LRI's sale of property interests falls within securities laws. Those
12 occasions include the following:
13

14 1. On July 2, 2008, Plaintiff generated and signed a legal opinion letter, similar to
15 the legal opinion authored by Gordon & Silver, Ltd., which was submitted to the State of
16 Arizona, Department of Real Estate. Like the Gordon & Silver, Ltd. legal opinion, Plaintiff's
17 legal opinion letter concluded that LRI's property interests were not securities. The letter reads,
18 in part: "Therefore, since virtually the same analysis applies under Arizona securities law, as the
19 federal law, the LandBank interests are not securities." (Affidavit of Darren Proulx, Exhibit 6.)
20

21 2. In March of 2009, Plaintiff generated and signed a similar legal opinion letter
22 submitted to the State of California, Department of Real Estate. That letter concluded: "For all
23 the above reasons, we respectfully request that you determine that the Real Estate Interests are
24 not securities and that therefore the DRE has sole authority over the advertising by LRI in
25 connection with the sale of the Real Estate Interests." (Affidavit of Darren Proulx, Exhibit 7.)
26
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1 3. In March of 2010, Plaintiff generated and signed a letter to the State of Arizona,
2 Department of Real Estate. This letter provided notice of LRI's intent to sell subdivided land
3 and a request for an order of exemption from Arizona's requirement that a public report
4 regarding the land be issued because a similar report had already been issued from the State of
5 California, Department of Real Estate. The letter stated, in part, "Please find enclosed a separate
6 letter addressed to you as to why we do not believe the sale of the undivided interests in the
7 Subdivision constitutes the sale of a security for either Federal or Arizona securities law
8 purposes." (Affidavit of Darren Proulx, Exhibit 8.)

9
10 Plaintiff resigned as counsel for LRI in a letter dated May 8, 2010. In Plaintiff's
11 resignation letter, he accused Mr. Proulx of violating numerous state and federal laws. (Affidavit
12 of Darren Proulx, Exhibit 5.)
13
14

15 **III. STATEMENT OF UNCONTROVERTED FACTS**

16 1. LAND RESOURCE INVESTMENTS, INC. (hereinafter, "LRI") was a California
17 corporation authorized to do business in Nevada as a foreign corporation. The corporation was
18 dissolved in February of 2011. **(Affidavit of Darren Proulx.)**

19
20 2. LAND RESOURCE MANAGEMENT, INC. (hereinafter "LRM") is a Nevada
21 corporation duly organized and authorized to do business in the State of Nevada. **(Affidavit of**
22 **Darren Proulx.)**

23
24 3. DARREN PROULX is the Chief Executive Officer of LRI and LRM. **(Affidavit of**
25 **Darren Proulx.)**

26 4. Plaintiff is an attorney licensed to practice in California.
27
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1 5. On or about November 27, 2007, LRI retained Plaintiff to serve as general legal counsel.
2 **(Affidavit of Darren Proulx, Exhibit "1")** Plaintiff signed a retainer agreement and
3 confidentiality agreement with LRI dated November 27, 2007 and November 28, 2008,
4 respectively. **(Affidavit of Darren Proulx Exhibit "2.")**

5 6. During his tenure as counsel for LRI, Mr. Coppola also provided general legal counsel
6 for Land Resource Management, Inc. **(Affidavit of Darren Proulx, Exhibit 3.)**

7 7. In or around March of 2010, the Associations hired Mr. Coppola to provide general legal
8 counsel. **(Affidavit of Darren Proulx, Exhibit 3.)**

9 8. In or around January of 2010, Plaintiff registered with the State Bar of Nevada as in-
10 house counsel for LRI. He was given the Nevada State Bar number 11343C. **(Affidavit of**
11 **Darren Proulx, Exhibit "4.")**

12 9. Plaintiff continued to act as counsel for LRI and LRM until he resigned in May of 2010.
13 **(Affidavit of Darren Proulx, Exhibit "5.")**

14 10. In July of 2008, Plaintiff generated and signed a legal opinion letter on behalf of LRI
15 which was submitted to the State of Arizona, Department of Real Estate. Plaintiff's legal
16 opinion letter argued that the LRI's sale of property interests did not fall within Arizona's
17 securities laws. The concluding sentence of the letter reads: "Therefore, since virtually the same
18 analysis applies under Arizona securities law, as the federal law, the LandBank interests are not
19 securities." **(Affidavit of Darren Proulx, Exhibit "6.")**

20 11. In March of 2009, Plaintiff generated and signed a legal opinion letter on behalf of LRI
21 which was submitted to the State of California, Department of Real Estate. **(Affidavit of**
22 **Darren Proulx, Exhibit "7.")** Plaintiff's legal opinion letter argued that LRI's sale of property
23 interests did not fall within Arizona's securities laws. The concluding sentence of that letter
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reads: "For all the above reasons, we respectfully request that you determine that the Real Estate Interests are not securities and that therefore the DRE has sole authority over the advertising by LRI in connection with the sale of the Real Estate Interests." (**Affidavit of Darren Proulx, Exhibit "7."**)

12. In March of 2010, Plaintiff generated and signed a letter which was submitted to the State of Arizona, Department of Real Estate. This letter provided notice of LRI's intent to sell subdivided land and requested an order that LRI would be exempt from Arizona's requirement that a public report regarding the land be issued. The letter reads, in part, "Please find enclosed a separate letter addressed to you as to why we do not believe the sale of the undivided interests in the Subdivision constitutes the sale of a security for either Federal or Arizona securities law purposes." (**Affidavit of Darren Proulx, Exhibit "8."**)

13. Plaintiff is not currently licensed to practice law in Nevada in any capacity.

14. Subsequent to Plaintiff's resignation as legal counsel for LRI, Plaintiff filed complaints against LRI with the following government agencies:

- Office of the Nevada Labor Commissioner
- Nevada Secretary of State
- Nevada Department of Real Estate
- California Department of Corporations – Securities Regulation Division
- California Department of Real Estate
- U.S. Securities and Exchange Commission
- U.S. Equal Employment Opportunity Commission

(**Affidavit of Darren Proulx, Exhibit "9."**)

15. The complaints Plaintiff filed with the Nevada Secretary of State, California Department of Corporations – Securities Regulation Division, and U.S. Securities Exchange Commission all concern subject matter within the scope of Plaintiff’s legal representation of LRI and LRM.

(Affidavit of Darren Proulx, Exhibits “10” and “11.”)

IV. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. Pro. 56(c). The party moving for summary judgment has the initial burden of showing the absence of a genuine issue of material fact. (See Adickes v. S.H. Kress & Co., 398 U.S. 144, 26 L.Ed.2d 142, 90 S.Ct. 1598 (1970); Zoslaw v. MCA Distrib. Corp., 693 F.2d 870, 883 (9th Cir. 1982), cert. denied, 460 U.S. 1085, 76 L.Ed.2d 349, 103 S.Ct. 1777 (1983).) A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. (See Admiralty Fund v. Hugh Johnson & Co., 677 F.2d 1301, 105-06 (9th Cir. 1982).) The movant’s burden is met by presenting evidence which, if uncontroverted, would entitle the movant to a directed verdict at trial, the burden then shifts to the respondent to set forth specific facts demonstrating that there is a genuine issue for trial. (Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 91 L.Ed.2d 202, 106 S.Ct. 2505 (1986).)

If the party seeking summary judgment meets its burden, then summary judgment will be granted unless there is significant probative evidence tending to support the opponent’s legal theory. (First Nat’l Bank v. Cities Serv. Co., 391 U.S. 253, 290, 20 L.Ed.2d 569, 88 S.Ct. 1575 (1968), reh’g denied, 393 U.S. 901, 21 L.Ed.2d 188, 89 S.Ct. 63 (1968); Commodity Futures

1 Trading Comm'n v. Savage, 611 F.2d 270 (9th Cir. 1979).) Parties seeking to defeat summary
 2 judgment cannot stand on their pleadings once the movant has submitted affidavits or other
 3 similar materials. Affidavits that do not affirmatively demonstrate personal knowledge are
 4 insufficient. (British Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978), cert.
 5 denied, 440 U.S. 981, 60 L.Ed.2d 241, 99 S.Ct. 1790 (1979), reh'g denied, 441 U.S. 968, 60
 6 L.Ed.2d 1074, 99 S.Ct. 2420 (1979).) Likewise, "legal memoranda and oral argument are not
 7 evidence and do not create issues of fact capable of defeating an otherwise valid motion for
 8 summary judgment." (Id.)
 9

10 11 V. ARGUMENT

12 13 A. In Bringing The Present Lawsuit, Plaintiff Has Violated Fiduciary Obligations Owed 14 To Defendants As Their Former Counsel

15 As an attorney licensed with the State Bar of California, Plaintiff is governed by
 16 California's rules of professional conduct. Research reveals two cases from California case law
 17 that are essentially on point.
 18

19 i. Styles v. Mumbert: An Attorney May Not Become The Opposing Party In A Lawsuit 20 Against His Former Client In A Lawsuit Where The Attorney Possesses Client 21 Confidences

22 In Styles v Mumbert, 164 Cal. App. 4th 1163 (2008), an attorney, Pagkas, represented
 23 Mumbert, a defendant in a civil case which resulted in a default judgment against Mumbert in
 24 the amount of \$730,466. (Styles, 164 Cal. App. 4th at 1166). The default judgment resulted
 25 because terminating sanctions were issued against Mumbert because of Pagkas's admitted
 26 inattention to the case. (Id.) After hiring new counsel, and after new counsel was unable to
 27
 28

1 have the terminating sanctions set aside, Mumbert appealed from the default judgment. (Id.)
2 Pagkas then purchased the rights to the judgment against Mumbert and filed a motion to
3 substitute into the appeal as respondent. (Id.)

4 The court held: “Pagkas’s attempt to substitute into the appeal as respondent violates his
5 fiduciary duty to Mumbert. The proposed substitution also violates the relevant Rules of
6 Professional Conduct and the Business and Professions Codes. [...]” (Id.) The court continued:

7
8 Few precepts are more firmly entrenched than the fiduciary nature of the attorney-
9 client relationship, which must be of the highest character. (Frazier v. Superior
10 Court (2002) 97 Cal.App.4th 23, 35, 118 Cal.Rptr.2d 129, citing Yorn v. Superior
11 Court for City and County of San Francisco (1979) 90 Cal.App.3d 669, 675, 153
12 Cal.Rptr. 295.) So fundamental is this precept that an attorney continues to owe a
13 former client a fiduciary duty even after the termination of the relationship.
14 (Zador Corp. v. Kwan (1995) 31 Cal.App.4th 1285, 1293, 37 Cal.Rptr.2d 754.)
15 For example, an attorney is forever forbidden from using, against the former
16 client, any information acquired during such relationship, or from acting in a way
17 which will injure the former client in matters involving such former
18 representation. (Frazier v. Superior Court, supra, 97 Cal.App.4th at p. 35, 118
19 Cal.Rptr.2d 129; Yorn v. Superior Court, supra, 90 Cal.App.3d at p. 675, 153
20 Cal.Rptr. 295.) These duties continue after the termination of the relationship in
21 order to protect the sanctity of the confidential relationship between and attorney
22 and client. (People ex rel. Dept. of Corporations v. Speedee Oil Change Systems,
23 Inc. (1999) 20 Cal.4th 1135, 1147, 86 Cal.Rptr.2d 816, 980 P.2d 371; Jeffrey v.
24 Pounds (1977) 67 Cal.App.3d 6, 9, 136 Cal.Rptr. 373.)

25 Therefore, even though Pagkas no longer represents Mumbert, he continues to owe
26 Mumbert the duty to protect their prior confidential relationship. Where a substantial
27 legal and factual relationship exists between a former representation and the attorney's
28 current position, a presumption arises that the attorney possesses confidential
information about the former client which would be compromised if an attorney were

1 allowed to take an adverse position after the representation ended. (Fox Searchlight
2 Pictures, Inc. v. Paladino (2001) 89 Cal.App.4th 294, 300, 106 Cal.Rptr.2d 906; People
3 ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc., supra, 20 Cal.4th
4 1135, 86 Cal.Rptr.2d 816, 980 P.2d 371.) Typically, this becomes an issue where an
5 attorney seeks to represent multiple adverse parties in successive representations. In
6 those cases, the former client can step in and prevent the attorney from representing his
7 adversary in order to safeguard his confidences. (City and County of San Francisco v.
8 Cobra Solutions, Inc. (2006) 38 Cal.4th 839, 847, 43 Cal.Rptr.3d 771, 135 P.3d 20.)
9 Here, Pagkas is not only attempting to represent the opposing side, his is trying to be the
10 opposing side in the very same litigation in which he represented Mumbert. There is
11 more than merely a "substantial" legal and factual relationship between the prior
12 representation and the current appeal. (Fox Searchlight Pictures, Inc. v. Paladino, supra,
13 89 Cal.App.4th at p. 300, 106 Cal.Rptr.2d 906.) Since the appeal is from the judgment
14 in which Pagkas represented Mumbert, it is the same case. Under any analysis, this
15 scenario not only raises the presumption, but establishes for a certainty that Pagkas
16 possesses confidential information adverse to Mumbert, which would be compromised if
17 his motion were granted. Therefore, by objecting, Mumbert can prevent Pagkas from
18 stepping into the shoes of his adversary in order to safeguard his confidences. The duty
19 of confidentiality of client information involves public policies of paramount
20 importance. (In Re Jordan (1974) 12 Cal.3d 575, 116 Cal.Rptr. 371, 526 P.2d 523.) The
21 preservation of confidentiality contributes to the trust that is the hallmark of the client-
22 lawyer relationship. (Rule 3-100, Discussion § 1.) Pagkas may not reveal or use
23 confidential information, gained through his prior representation of Mumbert, in this
24 appeal because it would be contrary to public policy and would undermine the very
25 nature of the attorney client relationship.

26 (Id. at 1167-68.)

27 The court in Styles focused on the presumption that an attorney possesses confidential
28 information concerning his former client as a basis for disallowing the attorney from becoming

1 his former client's adversary. However, there are also broader grounds. Namely, an attorney is
 2 prohibited from acting in any way which harms a former client with respect to a matter in which
 3 the attorney represented the client.

4 ii. People ex. Rel. Deukmejian v. Brown: An Attorney May Not Harm A Former Client
 5 With Respect To The Subject Matter Of Legal Representation The Attorney Provided
 6

7 The issue of harming a former client arose in People ex rel. Deukmejian v. Brown, 29
 8 Cal. 3d 150 (1981). There, the California Attorney General recommended that the Governor
 9 sign into law the State Employer-Employee Relations Act ("SEERA") which the legislature had
 10 adopted. Later, the Pacific Legal Foundation and the Public Employees Service Association
 11 filed a petition for writ of mandate seeking to have SEERA declared unconstitutional. (Id.) A
 12 summons was served on the defendants, including the Governor and the State Personnel Board.
 13 (Id.) As counsel to the State Personnel Board, the Attorney General met with the board and
 14 outlined the board's legal options. (Id.) The Attorney General subsequently withdrew as
 15 counsel for his state clients as he believed a potential conflict of interest existed. (Id.) The
 16 Attorney General then filed an independent petition for writ of mandate in the Court of Appeal
 17 against the Governor and other state agencies asking that SEERA be declared unconstitutional.
 18 (Id.)
 19
 20

21 In finding the Attorney General's actions to be in violation of the rules of professional
 22 conduct, the discussed the case Wutchumna Water Co. v. Bailey 216 Cal. 564, 573-574 [15
 23 P.2d 505] (1932), as follows:
 24

25 In [Wutchumna], this court declared that "an attorney is forbidden to do either of
 26 two things after severing his relationship with a former client. He may not do
 27 anything which will injuriously affect his former client in any manner in which he
 28 formerly represented him nor may he at any time use against his former client

1 knowledge or information acquired by virtue of the previous relationship.” While
2 the record here does not reveal whether the Attorney General acquired any
3 knowledge or information from his clients, the prohibition is in the disjunctive: he
4 may not use information or “do anything which will injuriously affect his former
5 client.” Unquestionably the Attorney General is now acting adversely to the
6 position of his statutory clients, one of which consulted him regarding this
7 specific matter.

8 (Id. at 155-56.)

9 The present case is similar to both Styles and Deukmejian.

10
11 iii. Plaintiff Is Attempting To Harm Defendants With Respect To Legal Issues For
12 Which He Represented Defendants And About Which He Possesses Confidential
13 Information

14 The indisputable facts show that Plaintiff is attempting to harm his former clients with
15 respect to the subject matter of legal representation he provided. Further, the nature of
16 Plaintiff’s representation of Defendants establishes for a certainty that Plaintiff possesses
17 confidential information adverse to Defendants.
18

19 Plaintiff’s first cause of action, titled “Failure to Register (US), alleges as follows:

- 20 • Defendants “participated in the sale of Interests to the general public in
21 violation of the requirements of the US Securities Acts to register such securities [...]”
22

23 (First Amended Complaint, page 21, lines 11-13.)

24 Plaintiff’s second cause of action, titled “Manipulation and Deceptive Devices (US),”
25 alleges as follows:

- 26 • “Defendants directly or indirectly, by the use of any means, including
27 instrumentalities of interstate commerce or of the mails, used or employed, in
28

1 connection with the purchase or sale of the Interests, manipulative or deceptive devices
2 in contravention of the rules and regulations as the Commissioner of the Securities and
3 Exchange Commission has prescribed as necessary or appropriate in the public interest
4 or for the protection of investors.”

5 (First Amended Complaint, page 21 line 27 to page 22 line 4.)

6
7 Plaintiff’s fourteenth cause of action, titled “Racketeer Influenced and Corrupt
8 Organizations (RICCO) Act,” alleges as follows:

9 • Defendants engaged in a “pattern of racketeering activity, including but not
10 limited to securities fraud.”

11 (First Amended Complaint, page 31, lines 10 through 16.)

12
13 Plaintiff’s lawsuit brings a legal challenge to the core business practices LRI, a business
14 for which he provided legal counsel – even serving as in-house counsel – for approximately two
15 and one half years. As in Mumbert, “Under any analysis, this scenario not only raises the
16 presumption, but establishes for a certainty that [Plaintiff] possesses confidential information
17 adverse to [Defendants] [...]”

18
19 Furthermore, Defendants have provided the Court with three examples of legal opinions
20 submitted to state agencies which Plaintiff generated and signed, and which conclude that LRI’s
21 sale of interest in parcels of real estate does not fall within the purview of securities regulations.
22 (Affidavit of Darren Proulx, Exhibits “6,” “7” and “8.”) Plaintiff’s lawsuit addresses the
23 *exact subject* of Plaintiff’s legal representation and takes the *exact opposite* position to what
24 Plaintiff argued as counsel for LRI.

25
26 It is difficult to conceive of a more blatant violation of the precept that an attorney is
27 forbidden from doing “anything which will injuriously affect his former client in any manner in
28

1 which he formerly represented him.” (Wutchumna Water Co. v. Bailey 216 Cal. 564, 573-574
 2 [15 P.2d 505] (1932).) As the court stated in Mumbert, allowing the present litigation to
 3 continue “would be contrary to public policy and would undermine the very nature of the
 4 attorney client relationship.” (Mumbert, 164 Cal. App. 4th at 1168.)

5
 6
 7 **B. Defendants Are Entitled To Judgment On the Pleadings With Respect to Plaintiff's**

8 **ADA Claim**

9 Granting a motion for judgment on the pleadings under Federal Rule of Civil Procedure
 10 12(c) is proper when “the moving party clearly establishes on the face of the pleadings that no
 11 material issue of fact remains to be resolved and that it is entitled to judgment as a matter of
 12 law.” (Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir.1989). In
 13 analyzing a Rule 12(c) motion, the court must assume the pleading's factual allegations to be true
 14 and must construe all reasonable inferences in favor of the nonmoving party. (Seventh-Day
 15 Adventists, 887 F.2d at 230.)

16
 17 Here, with respect to Plaintiff's ADA claim, Plaintiff's 1st Amended Complaint contains
 18 the following allegations:
 19

20 99. Plaintiff Coppola was perceived by Defendants to have a disability which
 21 would be subject to employment accommodation under the Americans with
 22 Disabilities Act, 42 USC 12111 to 12117.

23 [...]

24 229. Defendants and each of them came to believe that Plaintiff Coppola
 25 suffered from a health condition which among other sections, Section 12112 of
 26 the Americans with Disabilities Act of 1990 (“ADA”) would require reasonable
 27 accommodation thereof.
 28

230. In fact, Defendants did not reasonably accommodate Plaintiff Coppola but rather constructively terminated Plaintiff Coppola.

(First Amended Complaint, page 21 lines 1-3, page 45 lines 22-26)

Clearly, Plaintiff fails to provide any substantial factual allegations whatsoever. Instead, Plaintiff simply makes conclusory statements from which it is impossible to discern whether any elements of an ADA claim are present. Plaintiff even fails to mention what the alleged “perceived disability” might have been. Therefore, even assuming all of Plaintiff’s factual allegations are true, Defendants are entitled to judgment as a matter of law.

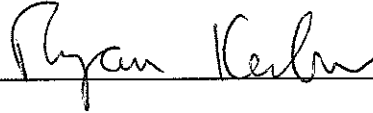
VI. CONCLUSION

Since Plaintiff’s resignation from LRI and LRM, Plaintiff has acted with utter belligerence against his former clients. He has filed meritless complaints against them with at least seven state and federal agencies, basing those complaints on knowledge he learned as counsel for defendants. The present lawsuit is merely the most recent manifestation of Plaintiff’s outrageous behavior.

As in Styles and Deukmejian, the Court cannot allow Plaintiff to continue any further. This lawsuit constitutes a serious breach of the fiduciary responsibilities Plaintiff owes to his former clients. Furthermore, the lawsuit is bereft of merit. It is filed principally on behalf of “doe plaintiffs” – which would qualify as Plaintiff’s unauthorized practice of law if the doe plaintiffs were more than figments of Plaintiff’s imagination. Without question, Plaintiff’s lawsuit and subsequent motions were slopped together for no purpose other than furthering Plaintiff’s twisted goal of causing harm to Defendants. For these reasons, Defendants’ request that their motion be granted and the entire action be dismissed with prejudice.

1 DATED this 26th day of July, 2011.

2
3 ALESSI & KOENIG, LLC

4 
5

6 Robert A. Koenig (NV SBN 3203)
7 Ryan Kerbow (NV SBN 11403)
8 ALESSI & KOENIG, LLC
9 9500 W. Flamingo, Suite #205
10 Las Vegas, Nevada 89147
11 Phone: (702) 222-4033
12 Fax: (702) 254-9044
13 Attorney for Defendants
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AFFIDAVIT OF DARREN K. PROULX

IN SUPPORT OF DEFENDANTS' COUNTER MOTION FOR SUMMARY JUDGMENT

I, Darren K. Proulx, hereby declare:

1. LAND RESOURCE INVESTMENTS, INC. (hereinafter, "LRI") was a California corporation authorized to do business in Nevada as a foreign corporation. The corporation was dissolved in February of 2011.

2. LAND RESOURCE MANAGEMENT, INC. (hereinafter "LRM") is a Nevada corporation duly organized and authorized to do business in the State of Nevada.

3. I am the Chief Executive Officer for LRI and LRM.

4. LRM engages in the management of property interest communities.

5. LRI sells a product which is describes as "land banking." LRI describes land banking as the process of buying and then holding real estate located in the path of urban growth for future sale.

6. Specifically, LRI purchases or options a large parcel of undeveloped real estate situated on the outskirts of a major metropolitan area (a "Property"). LRI adopts and records Covenants, Conditions and Restrictions ("CC&Rs") that are appurtenant to a Property. LRI then applies to the California Department of Real Estate ("DRE") for permission to subdivide a property into an undivided interest subdivision. Once approved, the DRE issues a Public Report authorizing the sale of the real estate interests. LRI acts as an incorporator and files Articles of Incorporation for a California Non-Profit Mutual Benefit Corporation (an "Association"), and adopts Bylaws for the Association. The purpose of the Associations is to provide the purchasers of the real estate interests a mechanism to manage the Property themselves.

1 7. Upon a close of escrow, each purchaser of a real estate interest receives a separate grant
2 deed to his or her undivided fee simple ownership interest in the real estate guaranteed by a
3 standard CLTA policy of title insurance. By virtue of the CC&Rs, each undivided fee simple
4 ownership interest includes one membership interest in the Association. The owners of the real
5 estate interest in a Property use the Association to provide and coordinate certain ministerial
6 services such as paying property taxes, buying insurance, paying for accounting and tax services,
7 keep a Property fee of weeds, etc. The owners are responsible to pay a pro-rata share of the dues
8 of the Association. The CC&Rs provide a mechanism for enforcing the payment of dues.
9

10 8. At present, there are seventeen (17) Associations. Each Association is named a variation
11 of "Cal Land Resources ### Association, Inc.," with the numerical portion of the name different
12 for each Association.
13

14 9. Each owner may freely sell, transfer and/or assign his or her undivided fee simple interest
15 in the real estate to any other party at any time without restriction. Further, the CC&Rs provide a
16 mechanism by which to sell the entire parcel, at which time all owners will receive a pro-rata
17 distribution of the proceeds from the sale.
18

19 10. On or about November 27, 2007, LRI retained Mr. Coppola to serve as general legal
20 counsel. Mr. Coppola signed a retainer agreement and confidentiality agreement with LRI dated
21 November 27, 2007 and November 28, 2008, respectively. True and correct copies of said
22 agreements are attached hereto as **Exhibit "1"** and **Exhibit "2,"** respectively.
23

24 11. During his tenure as counsel for LRI, Mr. Coppola also provided general legal counsel to
25 Land Resource Management, Inc. In or around March of 2010, the Associations hired Mr.
26 Coppola to provide general legal counsel.
27
28

12. For his simultaneous legal representation of LRI, LRM and the Associations, Plaintiff generated a conflict waiver for the Associations to sign. A true and correct copy of the waiver signed by Cal Land Resources 008 Association, Inc. is attached hereto as **Exhibit "3."**

13. In or around January of 2010, Mr. Coppola registered with the State Bar of Nevada as in-house counsel for LRI. He was given the Nevada State Bar number 11343C. A true and correct copy of a letter from the State Bar of Nevada asking me to respond to questions concerning Mr. Coppola's moral character is attached hereto as **Exhibit "4."** My responses are also attached as **Exhibit "4."**

14. Mr. Coppola continued to act as counsel for LRI and LRM until he resigned in May of 2010. A true and correct copy of said letter of resignation is attached hereto as **Exhibit "5."**

15. Whether state or federal securities laws apply to LRI's sale of real estate interests is an issue that has arisen multiple times since LRI retained Plaintiff as general counsel. The issue first arose in or around December 2007, when the Nevada Secretary of State, Securities Division ("Nevada Securities Division"), contacted LRI and PROULX regarding an investigation into whether LRI's sale of real estate interests violated Nevada's securities laws. LRI hired Gordon & Silver, Ltd., to generate a response for the Nevada Securities Division. The efforts of Gordon & Silver, Ltd., with assistance from Mr. Coppola who helped coordinate between LRI and Gordon & Silver, Ltd., culminated in a thorough legal opinion letter explaining why the property interests LRI sells are not securities subject to federal or state securities laws. After the legal opinion letter was sent to the Nevada Securities Division, the Nevada Securities Division sent LRI and myself a notice that it would be closing the investigation.

16. In July of 2008, Mr. Coppola generated and signed a legal opinion letter on behalf of LRI which was submitted to the State of Arizona, Department of Real Estate. Mr. Coppola's legal

1 opinion letter argued that the LRI's sale of property interests did not fall within Arizona's
2 securities laws. The concluding sentence of the letter reads: "Therefore, since virtually the same
3 analysis applies under Arizona securities law, as the federal law, the LandBank interests are not
4 securities." A true and correct copy of said legal opinion letter is attached hereto as **Exhibit "6."**

5
6 17. In March of 2009, Mr. Coppola generated and signed a legal opinion letter on behalf of
7 LRI which was submitted to the State of California, Department of Real Estate. Mr. Coppola's
8 legal opinion letter argued that LRI's sale of property interests did not fall within Arizona's
9 securities laws. The concluding sentence of that letter reads: "For all the above reasons, we
10 respectfully request that you determine that the Real Estate Interests are not securities and that
11 therefore the DRE has sole authority over the advertising by LRI in connection with the sale of
12 the Real Estate Interests." A true and correct copy of said legal opinion letter is attached hereto
13 as **Exhibit "7."**

14
15 18. In March of 2010, Mr. Coppola generated and signed a letter which was submitted to the
16 State of Arizona, Department of Real Estate. This letter provided notice of LRI's intent to sell
17 subdivided land and requested an order that LRI would be exempt from Arizona's requirement
18 that a public report regarding the land be issued. The letter stated, in part, "Please find enclosed
19 a separate letter addressed to you as to why we do not believe the sale of the undivided interests
20 in the Subdivision constitutes the sale of a security for either Federal or Arizona securities law
21 purposes." A true and correct copy of said legal opinion letter is attached hereto as **Exhibit**
22
23 **"8."**

24
25 19. Subsequent to Mr. Coppola's resignation as legal counsel for LRI, Mr. Coppola filed
26 complaints against LRI with the following government agencies:

- 27 • Office of the Nevada Labor Commissioner
28

- Nevada Secretary of State
- Nevada Department of Real Estate
- California Department of Corporations – Securities Regulation Division
- California Department of Real Estate
- U.S. Securities and Exchange Commission
- U.S. Equal Employment Opportunity Commission

A true and correct of an email I received from Mr. Coppola informing me that he filed said complaints is attached hereto as **Exhibit “9.”**

20. The complaints Mr. Coppola filed with the Nevada Secretary of State, the California Department of Corporations – Securities Regulation Division, and the U.S. Securities Exchange Commission all concern whether LRI’s sale of interests in real estate violate securities regulations.

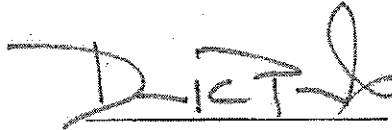
21. Attached hereto as **Exhibit “10”** are true and correct copies of communications between myself and the Nevada Secretary of State in regards to the investigation of LRI that the Nevada Secretary of State initiated in response to Mr. Coppola’s complaint.

22. Attached hereto as **Exhibit “11”** are true and correct copies of email communications between myself and Kimberly P. Stein, Esq. of the Office of the Nevada Secretary of State. In an email dated May 26, 2011, Ms. Stein informed me: “As an FYI – we have reviewed the matter and have concluded the matter at this time, as we did back in 2007.”

23. The documents attached hereto were made at or near the time of the event the documents concern, and are kept within my custody and control as records in the ordinary course of business for LRI and LRM.

1 I am over the age of eighteen (18), competent to stand trial and have personal knowledge
2 of the foregoing. If called to testify as a witness, I could and would competently testify thereto.
3

4 This declaration is made and entered on this 26th day of July, 2011 in the city of Sparks,
5 State of Nevada.
6

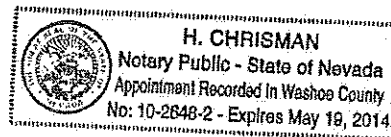
7 

8 Darren K. Proulx
9

10 SUBSCRIBED and SWORN to before me
11

12 this 26th day of July, 2011.
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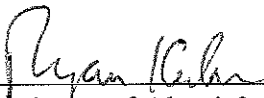
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17 NOTARY PUBLIC for said County and State
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2011, I electronically filed the foregoing DEFENDANTS' OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT; COUNTER MOTION FOR SUMMARY JUDGMENT/ADJUCIATION; MOTION FOR JUDGMENT ON THE PLEADINGS; AFFIDAVIT IN SUPPORT with the Clerk of the Court by using the CM/ECF system, and that service will be accomplished on all counsel and persons requesting notice by the court CM/ECF system.

I also sent a copy of said document via US Mail, postage prepaid, to the following:

Ralph Stephen Coppola
4785 Rio Pinar Drive
Reno, NV 89509


An employee of Alessi & Koenig, LLC